

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs December 13, 2000

STATE OF TENNESSEE v. CHARLES J. SMIGELSKI

Direct Appeal from the Criminal Court for Loudon County

No. 9285 Connie Clark, Judge

No. E2000-00533-CCA-R3-CD

February 2, 2001

The Appellant, Charles J. Smigelski, is currently incarcerated at the Northeast Correctional Facility where he is serving an effective thirty-year sentence. On appeal from the Loudon County Criminal Court, he raises the following issue: Whether the personal property exemption provided by TENN. CODE ANN. § 26-2-102 exempts funds held in an inmate's trust fund account from collection by the Department of Correction to satisfy a privilege tax imposed at sentencing. After review, we find that the Appellant has no appealable right under Tenn. R. App. P. 3(b). Accordingly, the appeal is dismissed.

Tenn. R. App. P. 3; Appeal Dismissed

DAVID G. HAYES, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and NORMA MCGEE OGLE, JJ., joined.

Joe H. Walker, Public Defender; Alfred Lee Hathcock, Jr., Assistant Public Defender, Harriman, Tennessee, on appeal; Kimberlee A. Waterhouse, Lenoir City, Tennessee, at trial, for the Appellant, Charles J. Smigelski.

Paul G. Summers, Attorney General and Reporter, Michael Moore, Solicitor General, Mark A. Fulks, Assistant Attorney General, J. Scott McCluen, District Attorney General, and Frank A. Harvey, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

On January 6, 1997, the Appellant, Charles J. Smigelski, entered guilty pleas in the Criminal Court of Loudon County to four counts of statutory rape and to two counts of child rape, resulting in an effective thirty-year sentence. These convictions subjected the Appellant to the assessment of privilege taxes under the County criminal injuries compensation reserve statute, TENN. CODE ANN. § 40-24-107. On May 7, 1999, the Appellant filed a motion with the trial court, asking the trial court

stop the clerk's execution against the Appellant's inmate trust fund account and to order a refund to his account of monies previously obtained by levy. On January 9, 2000, the trial court denied the motion. On appeal, the Appellant argues that the personal property exemption provided by TENN. CODE ANN. § 26-2-102 exempts funds held in his inmate trust fund account from collection to satisfy the criminal injuries compensation privilege tax imposed pursuant to TENN. CODE ANN. § 40-24-107.¹

The General Assembly enacted the Criminal Injuries Compensation Act of 1976 to provide victims of violent crime with some modest compensation for their injuries. TENN. CODE ANN. § 29-13-101 *et. seq.* Victims of crime did not have the right to compensation at common law and so this program, created as a matter of legislative largess, was intended to provide a governmental mechanism through which victims of violent crimes could receive compensation from the persons who injured them. Unlike the programs in other states that are funded with general revenue, Tennessee's program has been funded primarily with additional court costs taxed against persons convicted of serious crimes. See Williams v. State, No. 01-A-01-9206-BC00212 (Tenn. App. at Nashville, Feb. 13, 1993). Pursuant to the provisions of the criminal injuries compensation statute, when an offender is sentenced to the Department of Correction, "the clerk of the court shall certify to the commissioner of correction ... whether payment of such tax has been made. The commissioner shall then cause any amount owing to be collected from the prisoner during the offender's period of confinement by the department." TENN. CODE ANN. § 40-24-107(6)(b). In the present case, the Appellant was assessed a privilege tax of \$1300.²

Tennessee Rule of Appellate Procedure 3(b) specifies the lower court actions from which a criminal defendant has a rightful appeal and provides as follows:

In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not guilty; and (2) on a plea of guilty of nolo contendere, if the defendant entered into a plea agreement but explicitly reserved with the consent of the state and the trial court the right to appeal a certified question of law dispositive of the action, or if the defendant seeks review of the

¹The issue presented is one of first impression. The State cites Fletcher v. State, 9 S.W.3d 103 (Tenn. 1999), in support of its argument that the \$4000 exemption should not exempt an inmate's trust account when collecting a privilege tax imposed under TENN. CODE ANN. § 40-24-107. In Fletcher, our supreme court held that an indigent defendant in a civil case is liable for litigation taxes and that the Department of Correction has the authority to withdraw those taxes from the inmate's trust account. Fletcher, 9 S.W.3d at 105-106. While we acknowledge that Fletcher and the present case both involve indigent inmates and their trust fund accounts, we emphasize that the issue of personal property exemption was not raised in Fletcher.

²The County criminal injuries compensation reserve, TENN. CODE ANN. § 40-24-107, which provides for assessment of a tax, refers to the tax as a privilege tax. Under bankruptcy law, a tax on a privilege has been held to be an excise tax, i.e. an involuntary payment, not imposed directly upon persons or property, but rather on the performance of an act or the enjoyment of a privilege for governmental or public purposes. Op. Atty. Gen. 94-147 (Dec. 29, 1994)(citations omitted).

sentence and there was no plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation, and from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding.

Tenn. R. App. P. 3(b); *See generally* State v. Kowski Devel Taylor, No. W1998-006560-CCA-R3-CD (Tenn. Crim. App. at Jackson, Mar. 10, 2000). A suit to enjoin the Department of Correction from collecting court costs from an inmate's trust account is not among the listed enumerated causes of action. *See* Tenn. R. App. P. 3(b). Accordingly, we conclude that the Appellant has no right to an appeal, and this court has no jurisdiction to entertain the Appellant's claims.

In reaching our conclusion, we find it unnecessary to address the broader question of whether this court or the Court of Appeals has subject matter jurisdiction in cases involving the collection of funds held in an inmate's trust account. Nonetheless, we are aware of a recent order by the Court of Appeals wherein it transferred twenty-eight cases to this court involving an almost identical issue. State v. Terry Block, No. E2000-02148-COA-R3-CV (Tenn. Ct. App. at Knoxville, Dec. 18, 2000). The Court of Appeals found that this "dispute necessarily arises out of the criminal cases, and therefore, the Court of Criminal Appeals rather than this Court is vested with jurisdiction in this matter pursuant to TENN. CODE ANN. § 16-5-108." We note, however, that TENN. CODE ANN. § 40-24-105 provides that fines, costs, and litigation taxes may be collected in the same manner as a judgment in a civil action. Additionally, we point out that similar cases involving the collection of fines, costs, or taxes from an inmate's trust account have been previously addressed by the Court of Appeals. *See* Fletcher v. State, No. 02C01-9803-BC-00076 (Tenn. Ct. App. at Nashville June 22, 1999), *affirmed by* Fletcher, 9 S.W.3d at 103; Dorothy Sue Herron v. Issac Lydell Herron, No. W1999-01999-COA-R3-CV (Tenn. Ct. App. at Jackson, Oct. 31, 2000); Clarence Washington v. State, No. W1997-00143-COA-R3-CV (Tenn. Ct. App. at Jackson, Nov. 1, 2000); *see generally* Oldham v. Tennessee Dept. of Correction, No. M1198-00852-COA-R3-CV (Tenn. Ct. App. at Nashville, Mar. 16, 2000). Moreover, an order entered by the Tennessee Supreme Court in State v. Perry A. Cribbs, No. W1997-00289-SC-OT-DD (Tenn. at Jackson, Nov. 28, 2000) suggests that the inmate's remedy for suspending the collection of court costs from his or her inmate trust account by the Department of Correction would follow a civil appeal as it "lies with grievance procedures established by the Department of Correction."

CONCLUSION

The trial court's dismissal of a suit to enjoin the Department of Correction from collecting court costs from an inmate's trust account is not among the listed enumerated causes of action under Tenn. R. App. P. 3(b). Accordingly, this court is without authority to entertain the appeal. For this reason, the appeal is dismissed.

DAVID G. HAYES, JUDGE